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**PRELIMINARY DRAFT**  
**No. 3233**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

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**DIGEST**

**Citations Affected:** IC 29-1-6-1; IC 29-2-12-4.

**Synopsis:** Technical corrections. Makes technical corrections.

**Effective:** Upon passage.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 29-1-6-1, AS AMENDED BY P.L.6-2010,  
2       SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]: Sec. 1. In the absence of a contrary intent  
4       appearing in the will, wills shall be construed as to real and personal  
5       estate in accordance with the rules in this section.

6       (a) Any estate, right, or interest in land or other things acquired by  
7       the testator after the making of the testator's will shall pass as if title  
8       was vested in the testator at the time of making of the will.

9       (b) All devises of real estate shall pass the whole estate of the  
10      testator in the premises devised, although there are no words of  
11      inheritance or of perpetuity, whether or not at the time of the execution  
12      of the will the decedent was the owner of that particular interest in the  
13      real estate devised. Such devise shall also pass any interest which the  
14      testator may have at the time of the testator's death as vendor under a  
15      contract for the sale of such real estate.

16      (c) A devise of real or personal estate, whether directly or in trust,  
17      to the testator's or another designated person's "heirs", "next of kin",  
18      "relatives", or "family", or to "the persons thereunto entitled under the  
19      intestate laws" or to persons described by words of similar import, shall  
20      mean those persons (including the spouse) who would take under the  
21      intestate laws if the testator or other designated person were to die  
22      intestate at the time when such class is to be ascertained, domiciled in  
23      this state, and owning the estate so devised. With respect to a devise  
24      which does not take effect at the testator's death, the time when such  
25      class is to be ascertained shall be the time when the devise is to take  
26      effect in enjoyment.

27      (d) In construing a will making a devise to a person or persons  
28      described by relationship to the testator or to another, any person  
29      adopted prior to the person's twenty-first birthday before the death of  
30      the testator shall be considered the child of the adopting parent or  
31      parents and not the child of the natural or previous adopting parents.



1 However, if a natural parent or previous adopting parent marries the  
2 adopting parent before the testator's death, the adopted person shall  
3 also be considered the child of such natural or previous adopting  
4 parent. Any person adopted after the person's twenty-first birthday by  
5 the testator shall be considered the child of the testator, but no other  
6 person shall be entitled to establish relationship to the testator through  
7 such child.

8 (e) In construing a will making a devise to a person described by  
9 relationship to the testator or to another, a person born out of wedlock  
10 shall be considered the child of the child's mother, and also of the  
11 child's father, if, but only if, the child's right to inherit from the child's  
12 father is, or has been, established in the manner provided in  
13 IC 29-1-2-7.

14 (f) A will shall not operate as the exercise of a power of  
15 appointment which the testator may have with respect to any real or  
16 personal estate, unless by its terms the will specifically indicates that  
17 the testator intended to exercise the power.

18 (g) If a devise of real or personal property, not included in the  
19 residuary clause of the will, is void, is revoked, or lapses, it shall  
20 become a part of the residue, and shall pass to the residuary devisee.  
21 Whenever any estate, real or personal, shall be devised to any  
22 descendant of the testator, and such devisee shall die during the  
23 lifetime of the testator, whether before or after the execution of the will,  
24 leaving a descendant who shall survive such testator, such devise shall  
25 not lapse, but the property so devised shall vest in the surviving  
26 descendant of the devisee as if such devisee had survived the testator  
27 and died intestate. The word "descendant", as used in this section,  
28 includes children adopted during minority by the testator and by the  
29 testator's descendants and includes descendants of such adopted  
30 children. "Descendant" also includes children of the mother who are  
31 born out of wedlock, and children of the father who are born out of  
32 wedlock, if, but only if, such child's right to inherit from such father is,  
33 or has been, established in the manner provided in IC 29-1-2-7. This  
34 rule applies where the parent is a descendant of the testator as well as  
35 where the parent is the testator. Descendants of such children shall also  
36 be included.

37 (h) Except as provided in subsection (m), if a testator in the  
38 testator's will refers to a writing of any kind, such writing, whether  
39 subsequently amended or revoked, as it existed at the time of execution  
40 of the will, shall be given the same effect as if set forth at length in the  
41 will, if such writing is clearly identified in the will and is in existence  
42 both at the time of the execution of the will and at the testator's death.

43 (i) If a testator devises real or personal property upon such terms  
44 that the testator's intentions with respect to such devise can be  
45 determined at the testator's death only by reference to a fact or an event  
46 independent of the will, such devise shall be valid and effective if the



testator's intention can be clearly ascertained by taking into consideration such fact or event even though occurring after the execution of the will.

(j) If a testator devises or bequeaths property to be added to a trust or trust fund which is clearly identified in the testator's will and which trust is in existence at the time of the death of the testator, such devise or bequest shall be valid and effective. Unless the will provides otherwise, the property so devised or bequeathed shall be subject to the terms and provisions of the instrument or instruments creating or governing the trust or trust fund, including any amendments or modifications in writing made at any time before or after the execution of the will and before or after the death of the testator.

(k) If a testator devises securities in a will and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) Securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, excluding any security acquired by exercise of purchase options.

(2) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(3) Securities of the same organization acquired as a result of a plan of reinvestment.

Distributions in cash before death with respect to a described security are not part of the devise.

(l) For purposes of this subsection, "incapacitated principal" means a principal who is an incapacitated person. An adjudication of incapacity before death is not necessary. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. If:

(1) specifically devised property is sold or mortgaged by; or

(2) a condemnation award, insurance proceeds, or recovery for injury to specifically devised property are paid to;

a guardian or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

may be used to dispose of items of tangible personal property, other



than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

(n) A will of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:

- (1) the unified credit;
- (2) the estate tax exemption;
- (3) the applicable credit amount;
- (4) the applicable exclusion amount;
- (5) the generation-skipping transfer tax exemption;
- (6) the GST exemption;
- (7) the marital deduction;
- (8) the maximum marital deduction;
- (9) the unlimited marital deduction;
- (10) the inclusion ratio;
- (11) the applicable fraction;
- (12) any section of the Internal Revenue Code:

(A) relating to the:

- (i) federal estate tax; or
- (ii) generation-skipping transfer tax; and

(B) that measures a share of:

- (i) an estate; or
- (ii) a trust;

based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or

(13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12); refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.

(o) Subsection (n) does not apply to a will:

- (1) that is executed or amended after December 31, 2009; or
- (2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable federal estate or generation-skipping transfer tax.

(p) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in



1 subsection (n) shall refer instead to the first date on which the tax  
2 becomes legally effective.

3 (q) Within three (3) months following the latest to occur of the:

4 (1) decedent's death;

5 (2) fiduciary's appointment; or

6 (3) enactment of this subsection;

7 the personal representative under a will to which subsection (n) applies  
8 shall give written notice ~~regarding to~~ the affected beneficiary of the  
9 right to commence a proceeding under subsection (r) and to the present  
10 income beneficiary of any trust created under the will of the existence  
11 of this ~~statute~~, **section** and the beneficiary's right to commence a  
12 proceeding under subsection (r).

13 (r) The personal representative ~~of or~~ an affected beneficiary under  
14 a will described in subsection (n) may initiate a proceeding to  
15 determine whether the decedent intended that a formula described in  
16 subsection (n) be construed with respect to the law as it existed after  
17 December 31, 2009. A proceeding under this subsection must be  
18 commenced within nine (9) months after the death of the testator or  
19 grantor.

20 SECTION 2. IC 29-2-12-4 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The portion of  
22 ~~such the~~ federal estate tax ~~2001 et seq.~~ to be paid by each person, heir,  
23 or beneficiary of ~~said a decedent's~~ estate shall be determined by  
24 dividing the value of the property received by ~~such the~~ person, heir, or  
25 beneficiary, which is included in the net taxable estate, by the amount  
26 of the net taxable estate, and multiplying the result by the amount of the  
27 total federal estate tax paid.

28 SECTION 3. **An emergency is declared for this act.**

